

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.839 OF 2001

Municipal Corporation of Greater .. Appellant
Mumbai

versus

Smt. Kusum Virendra Shah & Others .. Respondents

...

Ms. Geeta Joglekar for appellant.

Ms. K.N. Patel for respondents - absent.

CORAM : D.G. KARNIK, J

DATED :12th October, 2006

ORAL JUDGEMENT:

1. Heard learned counsel for the appellant. None present for the respondents.

2. This appeal is directed against the order dated

25th January, 2001 passed by the city civil court, Mumbai allowing the motion no.926 of 1999 and thereby granting injunction restraining the appellant municipal corporation from acting upon the notice dated 6th December, 2000 issued under Section 394(4) of the Mumbai Municipal Corporation Act,1888 (for short, the 'M.M.C. Act').

3. The respondents are carrying on business of motor repairs in the suit premises after obtaining the licence under the Bombay Shops and Establishments Act,1948 (for short, "the Shop Act") from the appellant from 10th February, 1993. Respondents carried on the business smoothly without any objection from the appellant till December, 2000, when the appellant passed an order purportedly under Section 394(4) of the M.M.C. Act, directing the respondents to discontinue the use of the suit premises within 48 hours. The order also stated that if the respondents failed to comply the appellant would seize and carry away the articles kept in the suit premises. Immediately on receipt of the notice, the respondents filed a suit, bearing L.C. Suit No.1060 of 1999, against the appellant for an injunction restraining it from giving effect to the said notice. The respondents also took

out a motion bearing N.M. no.926 of 1999, in the suit claiming an interim injunction pending hearing and decision of the suit. By the order dated 25th January, 2001 the city civil court allowed the motion and granted an injunction restraining the appellant from acting upon the notice dated 6th December, 2000. That order is impugned in this appeal.

4. In the suit the respondents have pleaded that they had taken the suit premises on rent and were carrying on the business of motor repairs since 1993. They had also obtained licence from the appellant under the Bombay Shops and Establishments Act, 1948. A copy of the licence dated 10th December, 1993 issued by the appellant municipal corporation was also filed in the trial court.

5. The order dated 6th December, 2000 was passed by the appellant without notice to the respondents. Learned counsel for the appellant submits that Section 394 of the M.M.C. Act does not contemplate issuance of a notice prior to passing of the order. It is true that Section 394 of the M.M.C. Act does not in terms provide for issuance of a show cause notice before passing of the order. However rules of natural justice

cannot be said to have been excluded under Section 394 of the M.M.C. Act especially when a person is carrying on business after obtaining the necessary permission of the Municipal Corporation under the Shop Act. In this case it is worthwhile to note that respondents have been carrying on the business since 1993 and for a period of seven years the appellant did not take any action. It is not that respondents were carrying on business without knowledge of the appellant. They were carrying on the business with the knowledge of the appellant who itself had issued a licence under the Shop Act. The licence stated the nature of the business to be "automobile car repairing". In the circumstances the appellant ought to have issued at least show cause notice to the respondent before passing the order under Section 394(4) of the M.M.C. Act.

6. In *Olga Tellis and others vs. Bombay Municipal Corporation and others* reported in AIR 1986 S.C. 180, the Supreme Court while interpreting the provisions of Section 314 of the M.M.C. Act has read into it the requirements of issuance of a notice except in cases of urgency which brooks no delay, though the section did not contain any provision of a notice.

Similarly in *Sopan Maruti Thopte and another vs. Pune Municipal Corporation and another* reported in AIR 1996 Bombay 304, a Division Bench of this Court while interpreting the provisions of Section 351 and 354-A of the M.M.C. Act held that the municipal corporation should at least issue a notice before taking action. The same principles must apply to an order to be issued under Section 394(4) of the M.M.C. Act. A notice must be issued, except in cases of grave urgency requiring no delay, to the person concerned before passing an order under Section 394(4) of the M.M.C. Act.

7. The order of injunction was passed by the trial court on 25th January, 2001 and is in force for a period of more than five years. There is nothing on record to show that during the period of five years the respondents have abused the suit premises in any way or have caused any nuisance or annoyance which is the requirement for passing of an order under Section 394(4) of the M.M.C. Act.

8. In the circumstances I do not see any reason to interfere in the order of injunction passed by the trial court. The appeal is accordingly dismissed, but in the circumstances without any order as to the costs.

(D.G. KARNIK, J)